

PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION

445 12th STREET, S.W

WASHINGTON, D C. 20554

News media information 202/418-0500 Fax-On-Demand 202/418-2830 Internet <http://www.fcc.gov> ftp.fcc.gov



DA 03-2733

August 25, 2003

PROCEDURES ESTABLISHED FOR ARBITRATION OF AN INTERCONNECTION AGREEMENT BETWEEN VERIZON AND CAVALIER

(WC Docket No. 02-359)

In this Public Notice, as set forth below, we establish a schedule of filing and hearing dates for this proceeding,¹ pursuant to authority delegated to the Chief, Wireline Competition Bureau (WCB),² and in consideration of a motion filed August 22, 2003, by Verizon Virginia, Inc (Verizon or Respondent) and a response to that motion filed August 25, 2003, by Cavalier Telephone, LLC (Cavalier or Petitioner).

On February 4, 2003 the Commission released the *Cavalier Preemption Order*,³ which preempted, pursuant to section 252(e)(5) of the Communications Act of 1934, as amended (Communications Act or Act),⁴ the jurisdiction of the Virginia State Corporation

¹ See Attachment

² See *Procedures for Arbitrations Conducted Pursuant to Section 252(e)(5) of the Communications Act of 1934, as amended*, Order, 16 FCC Rcd 6231, FCC 01-21 (rel Jan 19, 2001) (*Arbitration Procedures Order*). See also 47 C.F.R. §§ 51.805, 51.807. The Commission delegated to the Chief, Common Carrier Bureau (now WCB), authority to serve as the Arbitrator in section 252(e)(5) arbitration proceedings, with the assistance of the staff of the Wireline Competition and Enforcement Bureaus. As used in this Public Notice, the term "Arbitrator" refers to WCB and authorized staff of the Wireline Competition and Enforcement Bureaus assisting in the arbitration proceeding.

³ See *Petition of Cavalier Telephone, LLC, Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon-Virginia, Inc and for Arbitration*, Memorandum Opinion and Order, 18 FCC Rcd 1558, DA 03-357 (rel Feb. 4, 2003) (*Cavalier Preemption Order*).

⁴ 47 U.S.C. § 252(e)(5)

Commission (Virginia Commission) with respect to the arbitration of an interconnection agreement between Verizon and Cavalier.

In the *Cavalier Preemption Order*, WCB, pursuant to authority delegated to conduct section 252(e)(5) arbitration proceedings, directed Cavalier to contact WCB prior to filing a Petition for Arbitration to schedule a joint pre-filing conference with the parties.⁵ The *Cavalier Preemption Order* further directed the parties to refer to the procedures that had been established for the Commission's previous arbitration,⁶ noting that those procedures might be modified somewhat to govern a Cavalier-Verizon arbitration based on discussions at the pre-filing conference.⁷ Finally, WCB indicated that it would issue a public notice establishing procedures and a pleading schedule specific to the Cavalier-Verizon arbitration once the joint pre-filing conference had been held.⁸

An initial joint pre-filing conference was held on March 4, 2003, wherein the parties indicated they were continuing to negotiate in an effort to resolve additional issues and thus limit the number of issues required to be arbitrated. They requested the ability to continue negotiations prior to Cavalier's filing its Arbitration Petition. WCB agreed but directed the parties to provide weekly updates on the status of their discussions. On July 22, 2003, a second joint pre-filing conference was held wherein Cavalier indicated it was prepared to file its Arbitration Petition and the parties proposed a schedule for proceeding with the arbitration.⁹

Cavalier filed its Arbitration Petition on August 1, 2003.¹⁰ Subsequently, on August 21,

⁵ *Cavalier Preemption Order*, at para 7

⁶ *See Procedures Established For Arbitration of Interconnection Agreements Between Verizon and AT&T, Cox, and WorldCom*, CC Docket Nos. 00-218, 00-249, 00-251, Public Notice, DA 01-270 (rel. Feb. 1, 2001) (*AT&T/Cox/WorldCom Procedural Public Notice*)

⁷ *Cavalier Preemption Order*, at para 7, note 23

⁸ *Id.* at para 7

⁹ Pursuant to the proposed schedule established at the July 22, 2003 joint pre-filing conference, Cavalier would file its Arbitration Petition on August 1, 2003, Verizon would file its response on August 26, 2003, and Cavalier would reply on September 2, 2003. In establishing the proposed schedule, WCB noted that if the parties wished to propose modifications to the proposed arbitration proceeding schedule, WCB would entertain joint requests provided such requests did not delay release of an arbitration award within the 9-month period encouraged in the Commission's *Arbitration Procedures Order*. *See Arbitration Procedures Order*, 16 FCC Rcd. at 6234, para. 13

¹⁰ *See Petition of Cavalier Telephone, LLC, Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon-Virginia, Inc. and for Arbitration*, WC Docket No. 02-359 (filed Aug. 1, 2003) (Arbitration Petition)

2003, the Commission released the text of the *Triennial Review Order*.¹¹ To enable the parties to consider the impact of the new *Triennial* rules on their unresolved issues, Verizon requested a modification of the proposed arbitration procedural schedule to extend the August 26, 2003 date by which Verizon was to submit its response to the Arbitration Petition, as well as certain other dates.¹² Cavalier's response to Verizon's motion proposed alternative dates. This Public Notice sets forth the revised schedule as well as the procedures that will apply to the Cavalier-Verizon Arbitration proceeding from this point until the arbitration award is issued.¹³

A. Arbitration Petition Responses

1. Respondent's Response. No later than September 5, 2003, Respondent shall file with the Commission and serve on each party to the proceeding a Response, which shall include a Response to the Statement of Unresolved Issues, Respondent's Statement of Additional Unresolved Issues, and a Statement of Relevant Authority.¹⁴

1.1. The Response to the Statement of Unresolved Issues shall include:

- a)** The Respondent's position as to each unresolved issue identified by Petitioner;
- b)** A list identifying each person with knowledge upon whom Respondent intends to rely to support its position on each of the unresolved issues; and
- c)** Copies of all cost models, cost studies, and other studies on which Respondent intends to rely to support its position and any documentation underlying those cost models, cost studies, and other studies. Computerized cost models must be submitted in a form that allows the Arbitrator and the parties to alter inputs and

¹¹ See *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, CC Docket Nos. 01-338, 98-98, 98-157, FCC 03-36 (rel. Aug. 21, 2003) (*Triennial Review Order*).

¹² The *Triennial* rules are effective 30 days after their publication in the Federal Register. See *Triennial Review Order* at 1.

¹³ For purposes of the Commission's resolution of the issues presented for arbitration, the date on which a Petition for Arbitration is filed with the Commission shall be deemed to be the 135th day after which Verizon received the request to negotiate. Although the Commission is not bound by the deadlines imposed by section 252 upon the state commissions, WCB will attempt to release the arbitration award not later than 9 months after the date on which Verizon is deemed to have received the request to negotiate. See *Arbitration Procedures Order*, 16 FCC Rcd. at 6233-34, paras. 11-13.

¹⁴ See Attachment.

determine the effect on cost estimates.

1.2. The Respondent's Statement of Additional Unresolved Issues shall list each unresolved issue between Petitioner and Respondent for which arbitration is sought that is not identified in Petitioner's Statement of Unresolved Issues and the position of each of the parties on each of these issues. This portion of the response shall be organized on an issue-by issue basis and shall contain the information specified in 2.1 and 2.2, of the *AT&T/Cox/WorldCom Procedural Public Notice*

1.3. The Statement of Relevant Authority shall be organized on an issue-by-issue basis in the same manner as Respondent's Statement of Unresolved Issues and Statement of Additional Unresolved Issues and, to the extent not provided by Petitioner, shall

- a) Identify any proceeding pending before the state commission or this Commission relating to the disputed issues; and
- b) Discuss all federal and state statutory, judicial, and regulatory authority (including contrary authority) relating to the disputed issues.

2. Petitioner' Reply. No later than September 11, 2003, Petitioner shall file a reply to any unresolved issues identified by Respondent.¹⁵

3. Consideration of Issues. The Commission shall limit its consideration to the issues set forth in the Petition and in the Response, if any.

B. Status Conferences

1. Initial Status Conference. The parties shall appear for an initial status conference on September 17, 2003.¹⁶ At this conference, the parties shall raise any challenges to the appropriateness for arbitration of any issue listed in the Petition for Arbitration or Response. If such challenges are not raised at this conference, they shall be deemed waived. The following matters also may be discussed

- a) Simplifying or narrowing the issues;
- b) Obtaining admissions of fact or stipulations between the parties as to any or all of the matters in controversy;

¹⁵ See Attachment

¹⁶ See Attachment

- c) Settlement of some or all of the unresolved issues by agreement of the parties,
- d) Discovery issues;
- e) The schedule for the remainder of the case and the dates for any further status conferences; and
- f) Such other matters that may aid in resolving the unresolved issues or issuing an arbitration award

2. Subsequent Status Conferences The Arbitrator may hold such other status conferences as deemed necessary.

C. Discovery

1. Admissions. Assertions made in the Petition and not specifically denied in the Response shall be deemed admitted for the purposes of this proceeding.

2. Discovery Methods. The parties may obtain discovery through document requests, interrogatories, oral depositions, and requests for admissions. The parties may mutually agree to limit discovery. Discovery disputes will be resolved based on the written pleadings, any sworn affidavits attached thereto, and materials, if any, provided for *in camera* inspection, unless a discovery conference is deemed necessary.

- a) **Discovery Period.** The time frame for the commencement and completion of all discovery is set forth in the Attachment to this Public Notice. All written discovery responses shall be served and all oral depositions shall be completed by the discovery cut-off date set forth therein. All discovery disputes shall also be resolved by the discovery cut-off date.
- b) **Written Responses.** Responses to all written discovery requests shall be submitted to the requesting party no later than the date specified for a discovery response.
- c) **Document Requests.** The deadline for production of documents requested in the course of discovery shall be the same as the date a response to discovery is due.
- d) **Depositions.** The parties shall coordinate the scheduling of oral depositions in advance of taking such depositions. No party shall seek to depose a witness without first providing written notice at least five (5) days in advance. Depositions shall be taken at a time and place agreed upon by the parties.
- e) **Objections.** Objections to discovery requests shall be filed within three (3) days of receipt of the request. The parties shall negotiate diligently and in good faith.

concerning any discovery dispute prior to the filing of any objection. The objections shall include a statement that negotiations were conducted diligently and in good faith. If necessary, the Arbitrator will convene a discovery conference to resolve discovery disputes.

D. Decision Point List

1. Submission of Joint DPL. The parties shall jointly file a Decision Point List ("DPL") in a format approved by the Arbitrator no later than September 16, 2003 ¹⁷ An electronic copy of the DPL shall be provided to the Arbitrator. The DPL shall set forth, as to each unresolved issue:

- a) A summary of each party's position;
- b) A listing of all disputed issues of fact;
- c) Relevant admissions or stipulations of fact; and
- d) Each party's proposed contract language.

2. Revision of Joint DPL. The parties shall file an updated DPL no later than October 10, 2003, which shall include specific citation to the parties' testimony and other evidentiary submissions relevant to each unresolved issue ¹⁸

E. Evidentiary Submissions

1. Submissions. Unless the Arbitrator orders to the contrary, the Petitioner and Respondent are required to file and serve the following on the dates set forth in the Attachment to this Public Notice

2 Direct Testimony. Each party shall file and serve on each other party all of the evidence it intends to offer as part of its direct case, in the form of affidavits, with supporting documentation, expert reports and exhibits. The evidence shall be organized on an issue-by-issue basis, in accordance with the DPL. Each expert report shall include a complete statement of all opinions to be expressed by the expert, the basis and reasons for each opinion, and all data or other information considered by the witness in forming those opinions.

e) Rebuttal Testimony. Each party shall file and serve on each other party all of the

¹⁷ See Attachment

¹⁸ See Attachment

evidence it intends to offer as rebuttal to the other party's direct testimony, in the form of affidavits, with supporting documentation, expert reports and exhibits. Each expert report shall include a complete statement of all opinions to be expressed by the expert, the basis and reasons for each opinion, and all data or other information considered by the witness in forming those opinions.

- f) **Witness and Exhibit Lists.** Each party shall file and serve on each other party a list of all witnesses the party intends to call and exhibits the party intends to introduce during the hearing. Expert witnesses shall be identified as such.
- g) **Objections.** Each party shall file and serve objections to any affidavits, exhibits, expert reports, or witnesses proposed by the other party, or file and serve a statement that it has no such objections.

F. Arbitration Hearing

1. Notice Regarding Arbitration Hearing. Any arbitration hearing conducted in these proceedings shall not constitute a hearing within the meaning of section 554 of the Administrative Procedure Act.¹⁹ Should the Arbitrator determine that an arbitration hearing is required as to some or all of the issues, such hearing will take place on the dates specified in the Attachment to this Public Notice, including the date for the pre-hearing conference. The Arbitrator will notify the parties, in writing, regarding: (a) the time and place of the hearing; (b) the length of the hearing, (c) the matters as to which the hearing is to relate; and (d) any other appropriate matters. The dates for pre-hearing submissions are to be filed and served by the dates specified in the Attachment to this Public Notice.

2. Allotment of Time for Presentation of Case. Before the arbitration hearing, the Arbitrator may allot to each party a specific time within which the party may present evidence and make argument during the hearing. The parties will be required to present all of their evidence and argument within the time allotted.

3. Conduct of Arbitration Hearing. The arbitration hearing will be conducted by the Arbitrator. The arbitration hearing shall be open to the public, except that all or a portion of the arbitration hearing may be closed to protect a party's confidential information. The parties shall arrange for the stenographic transcription of the arbitration hearing by a court reporter authorized to swear in witnesses. The court reporter shall provide the transcript and exhibits of the hearing to the Arbitrator at the same time the transcript is provided to the parties. Absent an agreement to the contrary, the cost of the transcript shall be shared equally between the parties to the arbitration hearing.

¹⁹ 5 U S C § 554

4. Presentation of Oral Testimony; Availability of Witnesses. The parties to the arbitration hearing are entitled to be heard, to present evidence, and to cross-examine witnesses appearing at the arbitration hearing. No party may introduce an exhibit (including expert reports) or call a witness unless the exhibit or witness was identified in that party's pre-hearing submission, except for good cause shown. Each witness presenting direct testimony by affidavit, and all authors of expert reports included in the pre-hearing submissions shall be available for cross-examination by the other parties to the arbitration hearing. The Arbitrator may order that certain witnesses not attend the arbitration hearing before having testified.

5. Clarifying Questions. The Arbitrator may ask clarifying questions at any point during the arbitration hearing and may direct a party or witness to provide additional information as needed to fully develop the record.

6. Evidence. The Arbitrator may exclude evidence considered to be inadmissible, irrelevant, immaterial or cumulative. The Arbitrator may be guided by the Federal Rules of Evidence in making such determinations; strict conformity to such rules, however, is not required.

G. Post-Hearing Materials

1. Post-Hearing Briefs. Each party shall file and serve a post-hearing brief, which shall explain, as to each issue set forth in the DPL, and with appropriate citations to the record, why the Commission should adopt the position advocated by that party. The post-hearing briefs and post-hearing reply briefs shall be filed no later than the dates specified in the Attachment to this Public Notice. The Arbitrator may impose page limits with respect to such briefs.

H. General Provisions

1. Amendment of Procedures. The Arbitrator may change these procedures by written notice in order to expedite the proceeding, preserve the resources of the Commission or the parties, promote settlement, or for good cause shown.

2. Format of Pleadings.

- a) The parties' Statements of Unresolved Issues, Statements of Relevant Authority, and all briefs shall contain a Table of Contents and, if applicable, a Table of Authorities.
- b) Assertions in affidavits based upon information and belief are prohibited unless made in good faith and the affiant explains the basis for the belief and why the facts could not reasonably be ascertained.

3. Filing Procedures. By 5.00 p.m. on the day established as the deadline for the filing of any submission pertaining to this proceeding, four copies shall be filed with the Secretary of the Commission, eight copies shall be hand-delivered to the Arbitrator, and one copy shall be served on all other parties to the proceeding (i) by hand, where such parties are located in Washington, D.C., or (ii) by overnight delivery, where such parties are located outside Washington, D.C. The Arbitrator also requires that copies of submissions be served upon the Arbitrator by e-mail

4. Resolution of Unresolved Issues. Petitioner is obligated to inform the Arbitrator in writing as soon as possible of the resolution by the parties of any unresolved issue identified in either party's Statement of Unresolved Issues or the DPL.

5. Failure to Respond. The Arbitrator may require the parties to provide such information as may be necessary to reach a decision on the unresolved issues. If any party refuses or fails unreasonably to respond on a timely basis to any reasonable request, then the Commission may proceed on the basis of the best information available to it from whatever source derived

6. Ex Parte Status; Confidentiality of Information. These proceedings are restricted for ex parte purposes. Therefore, ex parte presentations are prohibited. Parties seeking to protect the confidentiality of information produced or exchanged shall follow the procedures set forth in Commission rule 1.731, substituting the phrase "this proceeding" for "formal complaint proceeding."²⁰

By the Chief, Wireline Competition Bureau.

News Media contact Michael Balmoris (202) 418-1500

FCC Wireline Competition Bureau contacts. Jeremy Miller (202) 418-1580

Richard Lerner (202) 418-1500

²⁰ 47 C.F.R. § 1.731

ATTACHMENT

Cavalier/Verizon Virginia Arbitration Schedule

Day	Date	Action
0	Friday, August 1, 2003	Cavalier Files Petition
35	Friday, September 5	Verizon files Response and Additional Issues
38	Monday, September 8	Discovery begins (after consultation re limits)
41	Thursday, September 11	Cavalier files Response to Verizon Issues
46	Tuesday, September 16	Parties file Joint Decision Point List (DPL)
47	Wednesday, September 17	Initial Status Conference
49	Friday, September 19	Direct Testimony Due
52	Monday, September 22	Last day to Propound Discovery
63	Friday, October 3	Discovery Responses Due
68	Wednesday, October 8	Parties file Rebuttal Testimony
70	Friday, October 10	Parties file Revised Joint DPL (citing testimony) and Evidence/Witness Designations
74	Tuesday, October 14	Objections to Evidence/Witness Designations Due
75	Wednesday, October 15 or TBD	Pre-Hearing Conference
76 – 77	Thursday, October 16 – Friday, October 17	Evidentiary Hearing
88	Monday, October 27	Parties file Post-Hearing Briefs
95	Monday, November 3	Parties file Post-Hearing Reply Briefs